

## **REMARKS**

In the Office Action, the Examiner objected claims 33-41; rejected claims 30 and 31 under 35. U.S.C. §101; and rejected claims 1-7 and 23-41 under 35 U.S.C. §103(a). These objections and rejections are fully traversed below.

Claims 30, 31 and 33-40 have been amended to further clarify the subject matter regarded as the invention. Thus, claims 1-7 and 23-41 remain pending. Reconsideration of the application is respectfully requested.

### **OBJECTION OF CLAIMS 33-41**

In the Office Action, the Examiner objected claims 33-41 due to an informality. Claims 33-40 have been amended to correct the informality. Therefore, it is respectfully requested that the Examiner withdraw the objection to claims 33-41.

### **REJECTION OF CLAIMS 30 and 31 UNDER 35 U.S.C. §101**

In the Office Action, the Examiner rejected claims 30 and 31 under 35 U.S.C. §101 alleging that these claims are directed towards non-statutory subject matter. Applicants respectfully disagree. The nature of the computing system or server recited in these claims is sufficiently tangible, physical and/or functional to satisfy the requirements of 35 U.S.C. §101. Nevertheless, to expedite prosecution of this application, Applicants have amended claims 30 and 31 such that the elements in the body of the claim denote means-plus-function elements which should obviate the Examiner "software per se" argument. Accordingly, it is respectfully requested that the Examiner withdraw the rejection to claims 30 and 31 under 35 U.S.C. §101.

Additionally, with respect to claims 32 and 41, Applicants have amended paragraph [0061] of the specification as suggested by the Examiner.

### **PATENTABILITY OF CLAIMS 1-7 AND 23-41**

In the Office Action, the Examiner rejected claims 1-7, 30-33, and 41 under 35 U.S.C. §103(a) as being unpatentable over Nelson et al., U.S. Patent No. 6,498,897, in view of Binding et al., U.S. Patent No. 6,775,687; and rejected claims 23-29 and 34-40 under 35 U.S.C. §103(a) as being unpatentable over Nelson et al. in view of Binding et al. and further in view of Hoffert et al., U.S. Patent No. 6,374,260. Applicants respectfully disagree.

Nelson et al. describes a media server system and method in which digital media assets are delivered across networks by streaming data packets. The general operation of a media server is described in Nelson et al., column 3, line 26-40, where it states:

Media server 12 can be connected to a plurality of client system 16 across a communication network 18. Communication network 18 can be supported by a variety of connection types such as a local area network, wide area network, and the Internet. In general, a user of a client system 16 can send a request to media server 12 across communication network 18. The request can identify a digital media title that the user decides to playback on client system 16. Media server 12 responds by accessing the appropriate media file from digital media data 14, separating the media file into data packets and streaming data packets to client system 16. Client system 16 receives the data packets and uses a decoder to process the data packets and playback the digital media data.

In contrast, the claim 1 is generally associated with enabling client machines to access, via a network, a media database residing on a server. More particularly, claim 1 pertains to a method for retrieving media across a network. Among other things, claim 1 recites "querying a server for features of the server" (claim 1, line 3) and "receiving the features of the server, the features including information about at least one digital media database..." (claim 1, lines 4-6). In contrast, Nelson et al. is merely describing installation of a media file on a media server as well as playback of the media file. In doing so, the media server extracts header information from a media file and stores the header information in a database along with server information. As explained at column 5, lines 5-8 of Nelson et al., "[b]y performing header information extraction and storing of media metadata during the install process, the media server is prepared to quickly access and send the header information to a requesting client system". As such, Nelson et al. does not teach or suggest querying a server for features of the server where the features include information about at least one digital media database. Further, the information being received from the server, as recited in claim 1, includes metadata about records within the digital media database.

Thereafter, according to claim 1, the server can again be queried for information to populate one or more of the records of the digital media database. On pages 4 and 5 of the Office Action, the Examiner makes reference to injection of artificial headers 54

into the decoder 56, which allegedly allows a smooth playback of digital media data. In this regard, the Examiner refers to column 6, lines 8-12 of Nelson et al. However, in sharp contrast, claim 1 recites that the information being queried from the server concerns the information required to populate one or more records of the digital media database. The injection of an artificial header as described in Nelson et al. during playback is not information being utilized to populate records of a digital media database. It should be noted that claim 1 also recites that subsequent to populating one or more records of the digital media database, digital media associated with at least one of the populated records is retrieved. Hence, the receiving of the features of the server and the subsequent populating of records of the digital media database based on information provided by the server are performed prior to receiving digital media associated with at least one of the populated records.

On page 6 of the Office Action, in discussing claims 1, 30 and 32, the Examiner admits to various deficiencies of Nelson et al., including failing to teach “querying a server for features of the server” and “receiving the features of the server, the features including information about at least one digital media database...” However, in an attempt to overcome these deficiencies of Nelson et al., the Examiner relies on Binding et al.

Binding et al. describes a method, system and computer program product for exchanging supplemental information fields between a client and server. See Abstract. More specifically, Binding et al. enables “a server to request and obtain supplemental information that is not provided in a client's original request.” “This supplemental information can then be used by the server to complete a client's request for content stored at a particular location.” See Abstract.

However, even if Binding et al. were to be combined with Nelson et al., Binding et al. is not able to overcome the above-noted deficiencies of Nelson et al. In particular, claim 1 recites “querying a server for features of the server” (claim 1, line 3). However, in Binding et al. a server is requesting supplemental information from a client. This is clear from the specification of Binding et al. which clearly states: “An object of the present invention is to provide a technique for enabling a server to request and obtain supplemental information that is not provided in a client's original request.”

Fundamentally, Binding et al. is enabling a SERVER to request information from a CLIENT. Claim 1 claims something distinctly different, namely, querying a server for features of a server. Hence, the use of REDIRECT messages in Binding et al. to obtain supplemental information from a client not from a server.

Additionally, claim 1 recites “receiving the features of the server, the features including information about at least one digital media database...” (claim 1, lines 4-6). Binding et al., however, not only does not query a server for features, but also does not in any way query for information about a least one digital media database at the server. On pages 6-7 of the Office Action, the Examiner references the discussion of a conventional web browser in which a web page can be displayed and which may contain text, graphics, images, sound, video, etc. Binding et al., col. 1, lines 32-47. Regardless, such conventional use of a web browser to access a remote server to obtain a web page is by no means causing features of a server to be received in response to a query for such. Moreover, according to claim 1, the features of the server (being queried) include “information about at least one digital media database.” The conventional receipt and display of a webpage at a client as disclosed in Binding et al. is in no way capable of teaching or suggesting any ability of gather information about a digital media database.

Accordingly, it is submitted that claim 1 is patentably distinct from Nelson et al. in view of Binding et al..

Claim 30 pertains to a server for retrieving digital media, and claim 32 pertains to a computer readable medium for retrieving digital media. These claims recite limitations similar to those discussed above regarding claim 1, though in a means-plus-function format or a computer readable format. Nevertheless, for reasons similar to those noted above with respect to claim 1, it is submitted that claims 30 and 32 are also patentably distinct from Nelson et al. in view of Binding et al. for at least the above-noted reasons.

Claim 31 pertains to a server for providing digital media to one or more devices. Claim 31 recites “means for receiving a query from a device for features of the server” and “sending the features of the server to the device in response to the query” (claim 31, lines 4-5). In addition, claim 31 recites that “the features including information about at least one digital media database, wherein the information about the at least one digital media database includes metadata about records, wherein the metadata can be

used by the device to locally present the records as a first local presentation, and wherein the records pertain to digital media metadata or media collection data or both" (claim 31, lines 4-9). On page 8-9 of the Office Action, the Examiner admits to several deficiencies of Nelson et al. The install command of Nelson et al. is not a query from a device for features of a server. Further, an artificial header as utilized in Nelson et al. does not correlate to features of a server which includes information about at least one digital media database, wherein the information about the at least one digital media database includes metadata about records. Further, the metadata can be used by the device, as recited in claim 31, to locally present the records of the digital media database as a first local presentation. The artificial header described in Nelson et al. does not teach or suggest that a device could in anyway locally present records of a digital media database in a local manner at the device. Binding et al. is also not able to overcome these deficiencies of Nelson et al. In Binding et al., a server, not a client, requests supplemental information. Thus, Binding et al. is unable to teach or suggest a client querying a server for features, let alone teaching or suggesting querying for information about a least one digital media database at the server.

Accordingly, it is submitted that claim 31 is patentably distinct from Nelson et al. in view of Binding et al. In addition, claim 41 pertains to a computer readable medium for providing digital media to one or more devices. For reasons similar to those noted above with respect to claim 31, it is submitted that claim 41 is also patentably distinct from Nelson et al. in view of Binding et al..

Although the Examiner further relies on Hoffert et al. to reject claims 23-29 and 34-40, these dependent claims are patentable for at least the reasons noted above with respect to Nelson et al. in view of Binding et al. It is also noted that Hoffert et al., even if combined with Nelson et al. and Binding et al., such combination would be unable to overcome the various deficiencies of Nelson et al. and Binding et al..

Based on the foregoing, it is submitted that all claims are patentably distinct over the cited art of record. Additional limitations recited in the independent claims or the dependent claims are not further discussed because the limitations discussed above are sufficient to distinguish the claimed invention from the cited art. Accordingly, it is respectfully requested that the Examiner withdraw the rejection to claims 1-7 and 23-41 under 35 U.S.C. §103(a).

## **SUMMARY**

It is submitted that the objections to the claims have been traversed. It is also submitted that claims 30 and 31 satisfy the requirements of 35 U.S.C. §101. In addition, it is submitted that claims 1-7 and 23-41 are patentably distinct from the cited references. Reconsideration of the application and an early Notice of Allowance are earnestly solicited.

If there are any issues remaining which the Examiner believes could be resolved through either a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned attorney at the telephone number listed below.

Applicants hereby petition for an extension of time which may be required to maintain the pendency of this case, and any required fee for such extension or any further fee required in connection with the filing of this Amendment is to be charged to Deposit Account No. 504298 (Order No. 101-P272D1).

Respectfully submitted,

/C. Douglass Thomas/

C. Douglass Thomas  
Reg. No. 32,947

Technology & Innovation Law Group, PC  
19200 Stevens Creek Blvd., Suite 240  
Cupertino, CA 95014  
408-252-9991  
408-252-9993 (fax)